

Determining Residency Status for Nebraska Individual Income Tax Filing

Overview

This guide will assist you in determining your residency status and tax computations when filing Nebraska individual income tax returns. When filing Nebraska income taxes, a taxpayer may be a resident, a nonresident, or a partial-year resident. The line numbers used in this guide are for the 2012 Nebraska Individual Income Tax Return, Form 1040N and schedules.

This information guide is intended to provide an overview. Nothing in this document supersedes, alters, or otherwise changes any provisions of the Nebraska tax code, regulations, Department rulings, or court decisions.



This information guide may change with updated information or added examples. The Department recommends you do not print this guide. Instead, sign up for the subscription service at www.revenue.ne.gov to get updates on your topics of interest.

Terms

Domicile. Domicile is the place an individual has his or her permanent place of abode and home. Even if the individual is absent at times, domicile is the place to which the individual intends to return. Actual residence is not necessarily domicile. An individual establishes domicile in Nebraska on the date he or she arrives in the state for other than temporary or transitory purposes. Once domicile is established, it remains the individual's domicile until it is abandoned. Domicile in Nebraska is abandoned when an individual leaves the state with no intention of returning to the state and establishes a domicile in another state while present in the other state for other than temporary or transitory purposes.

Partial-Year Resident. A partial-year resident is an individual who is a resident for part of the year, but less than the entire year. To be a partial-year resident, a taxpayer must change domicile during the year, either moving into or out of Nebraska.

Permanent Place of Abode. A permanent place of abode is a dwelling place permanently maintained by the taxpayer, whether or not it is owned by the taxpayer. A dwelling means a house, apartment, room, or other accommodation suitable for human occupation. It does not include a vacation camp, cottage, or dwelling place kept only for a temporary purpose.

Resident. A resident is an individual whose domicile is Nebraska, or an individual who is physically present in this state and maintains a permanent place of abode within this state for an aggregate of more than six months. Nebraska residence will be determined by Nebraska law. If an individual maintains a permanent place of abode in Nebraska and is present in Nebraska for at least 183 days during the tax year, that individual is a Nebraska resident even if living in another state. For this purpose, Nebraska considers any part of a day spent in Nebraska as a full day spent in the state.

Residents

Residents are taxed on their entire federal adjusted gross income (AGI), even if some of it has been earned for services performed outside Nebraska. A credit is allowed for income tax properly paid to another state. [Credit for Tax Paid to Another State, Nebraska Schedule II](#), must be completed and attached to the [Nebraska Individual Income Tax Return, Form 1040N](#) with a copy of the other state's return (including all schedules) to receive the credit.

Example 1. Cliff and Nancy own a drive-in restaurant in Grand Island, Nebraska. They operate the restaurant from April through October each year. They also own a house in Grand Island and live there during the seven months the restaurant is open. During the months the restaurant is closed, Cliff and Nancy return to their home in Texas. They consider Texas to be their domicile because they own a home there, they register to vote in Texas, and they hold Texas driver's licenses. Even though Cliff and Nancy do not consider Nebraska to be their domicile, they are Nebraska residents for Nebraska income tax purposes since they maintain a permanent place of abode and spend at least 183 days in Nebraska.

Residency in Nebraska is terminated on the date an individual leaves the state, abandons any intention of returning to the state, and establishes a domicile in another state while present in the other state for other than temporary or transitory purposes, unless an individual maintains a permanent place of abode in Nebraska and is present in Nebraska for at least 183 days during the tax year.

Example 2. Don and Deb own a home in Gothenburg, Nebraska. They also own a townhouse in Richmond, Virginia. Every year, from May 1 to September 1, they go to Virginia and stay in the townhouse while Deb teaches at a local university. Don and Deb are residents of Nebraska for income tax purposes because the yearly trips to Virginia are only temporary. Their domicile remains in Nebraska.

Note: Individuals who enter a branch of the United States military service while domiciled in Nebraska generally remain Nebraska residents throughout their career in the service. This is regardless of where they may be stationed by the military, unless they take legal steps to change their residency. Please see the Nebraska Information Guide [Nebraska Income Tax for Military Servicemembers \(their Spouses\) and Civilians Working with U.S. Forces in Combat Zones](#) for additional information for residents, nonresidents, and spouses.

Nonresidents

Nonresidents who have income derived from or connected with Nebraska sources must file a [Form 1040N](#) and [Nebraska Schedule III – Computation of Nebraska Tax for Nonresidents and Partial-year Residents Only](#). Please see the [instructions for Nebraska Schedule III](#) for additional information.

Nonresidents must report their total federal AGI from all sources, but are subject to Nebraska income tax only on the income derived from or connected with Nebraska sources, as calculated on Nebraska Schedule III. This includes items of income, gain, loss, and deduction related to Nebraska sources including items directly associated with:

- ❖ Any wages, salaries, or other compensation earned in Nebraska;
- ❖ Any distributive share of income and deductions from partnerships, limited liability companies, S corporations, cooperatives, estates, and trusts;
- ❖ The ownership or sale of any interest in real or tangible personal property in Nebraska;
- ❖ A business, trade, profession, or occupation carried on in Nebraska;
- ❖ The income from intangible personal property including annuities, dividends, interest, payments to boards of directors, and gains from the sale of intangible personal property (to the extent that this income is from activity or property used in a business, trade, profession, or occupation carried on in Nebraska);
- ❖ Capital gains/losses and net operating losses, only connected to income, gains, losses, and deductions obtained from Nebraska sources;

- ❖ The income from fiduciary services performed for a resident estate or trust; and
- ❖ Amounts paid to a corporation controlled by a nonresident for personal services performed in Nebraska by the nonresident.

The calculation of income tax for nonresidents and partial-year residents is not a matter of simply determining Nebraska source income and calculating tax based on that income. Nonresidents and partial-year residents must calculate a tentative tax based on all income, and then determine the actual tax liability based on the percentage of Nebraska source income compared to all income. The tax is calculated using Nebraska Schedule III.

Nonresidents may make adjustments to income subject to Nebraska tax on line 65 of the 2012 Form 1040N, Nebraska Schedule III. Only adjustments which are related to income received from Nebraska sources are allowed. Refer to the [Schedule III instructions](#) for a list of allowable adjustments. The credit for personal exemptions is claimed by nonresidents on line 70, Form 1040N, Nebraska Schedule III. Do not claim this credit on line 19, Form 1040N.

Nonresident partners, members, shareholders, or beneficiaries whose only connection with this state is the conduct of the business activities of a partnership, limited liability company, S corporation, or trust, are not required to file a Nebraska income tax return if the organization has properly withheld and remitted tax from the nonresident's share of the organization's income. All of the withholding will be kept by Nebraska to pay the individual's income tax owed. Any nonresident who files an agreement on [Nebraska Nonresident Income Tax Agreement, Form 12N](#) to avoid withholding must file a Form 1040N. Please see the instructions for Nebraska Schedule III for additional information.

Partial-Year Residents

Partial-year residents of Nebraska who have income derived from or connected with Nebraska sources must file a [Form 1040N](#) and [Nebraska Schedule III](#).

Partial-year residents are subject to Nebraska income tax on income included in federal AGI derived from or connected with Nebraska sources, while they are either residents or nonresidents of Nebraska. Normally, a taxpayer is a partial-year resident during the one time they are changing to or from a Nebraska domicile. A partial-year resident may make adjustments to income subject to Nebraska tax on line 65 of Form 1040N, Nebraska Schedule III. Only adjustments which are related to income received from Nebraska sources are allowed. Refer to the [Form 1040N, Schedule III instructions](#) for a list of allowable adjustments.

A partial-year resident may claim any of the following applicable Nebraska income tax credits on line 69 of Form 1040N, Nebraska Schedule III:

- ❖ Elderly or disabled credit;
- ❖ Nebraska nonrefundable credit for child/dependent care expenses; or
- ❖ Credit for prior year minimum tax.

The credit for personal exemptions is claimed on line 70 of Form 1040N, Nebraska Schedule III. Do not claim this credit on line 19, Form 1040N. The earned income credit is calculated on lines 74 and 75 of Form 1040N, Nebraska Schedule III, and then entered on line 33 of Form 1040N. For more information, refer to the specific Form 1040N, Schedule III instructions.

Changing Residency Status

To make a change of legal residence, an individual must have a physical presence in another state, show intent to establish residence in that state, and abandon his or her Nebraska domicile.

Note: Requirements for establishing residency vary by state. Contact the state where you are establishing residency to determine these requirements.

Generally, intent to change your domicile can be shown by:

- ❖ Purchasing a home in another state for use as a principal residence;
- ❖ Paying taxes as a resident of another state;
- ❖ Obtaining a driver's license as a resident of another state;
- ❖ Registering a motor vehicle as a resident of another state; or
- ❖ Registering to vote in another state.

The Department also compares:

- ❖ The size, value, and nature of your Nebraska residence to your newly acquired residence;
- ❖ Your employment or business connections in both locations;
- ❖ The physical location of items that have significant sentimental value to you; and
- ❖ Your social, community, and family ties in both locations.

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800-742-7474 (Nebraska and Iowa) or 402-471-5729

Nebraska Department of Revenue, PO Box 94818, Lincoln, Nebraska 68509-4818